

Cormick, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell, Thompson, Wortham—24.

NAYS—Senators Ball, Blassingame, Henry J. R., Piner, Smith, Grace—6.

Senator Brady offered the following amendment:

Amend Section 12 by inserting after the word "trial," in line 10, the words, "and the Sheriff shall be paid by the State the actual expenses of conveying the prisoner from the place where he was arrested to the jail of the county where the crime was committed."

Adopted.

Senator Terrell offered the following resolution:

Resolved, That on and after Monday next the daily sessions of this Senate shall begin at 2:30 P. M., and continue as long as necessary, and that all committees meet in the forenoon.

Senator Smith moved to strike out, "2:30 P. M.," and insert, "12 o'clock M."

Lost.

Pending the further consideration of this resolution, on motion of Senator Smith, the Senate adjourned until 10 o'clock A. M., to-morrow, by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Brown, Burton, Carroll, Francis, Ford, Guy, Henry F. M., Hobby, Ledbetter, Martin, McCormick, Piner, Ripetoe, Smith, Stephens, Storey—19.

NAYS—Senators Crain, Edwards, Grace, Henry J. R., McLeary, McCulloch, Moore, Terrell, Thompson, Wortham—10.

NOT VOTING—Senator Motley—1.

FORTY-FIFTH DAY.

SENATE CHAMBER,
ANSTIN, TEXAS, June 9, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by the Chaplain.

The journals of yesterday were adopted.

Senator Martin, Chairman of the Committee on Agricultural Affairs, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Agricultural Affairs, to whom was referred Senate Bill No. 225, "An Act to protect growing and ungathered crops from execution," have had the same under consideration, and recommend that it do not pass, as the law now in force on that subject is amply sufficient.

MARTIN, *Chairman.*

The President signed House Joint Resolution No. 23, "Validating the election for County Treasurers and County Surveyors, held on the fifteenth day of February, 1866," calling the attention of the Senate to the fact of his signing the same.

Senator Piner, Chairman of the Committee on Judiciary No. 2, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Judiciary No. 2, to whom was referred Senate Bill No. 2, entitled, "An Act to organize the County Courts and define

their powers and jurisdiction," together with the amendments thereto, adopted by the House of Representatives, beg leave to report that they have carefully considered the same, and respectfully recommend that the Senate concur in all the amendments aforesaid, except the fifth, seventeenth and twenty-fifth. Your committee cannot recommend a concurrence in these amendments for the following reasons:

The fifth amendment does not provide for a term of the County Court every two months for civil business, and once a month for criminal business, as required by the Constitution of the State, but leaves the section amended so indefinite that the County Courts can meet as frequently, or as seldom as the court may deem proper. Your committee do not think this advisable, nor can they see the propriety of vesting in the County Court the power to fix its own terms; and they respectfully submit that it is better for the public interests that the terms of said court be fixed by law, and not left subject to the caprices or private convenience of County Judges.

The seventeenth amendment adopted by the House seeks to change a rule of practice which has prevailed for many years, and is now in force in the District Courts, and one which has received the approval of the bench, bar and people of the State. We respectfully submit that the adoption of the proposed amendment would probably produce the following results:

First—It would inaugurate two entirely different rules of practice, one for the County, and the other for the District Courts, and thus produce confusion.

Second—It would admit an additional inducement to perjury by enabling a party, on the eve of trial, to force the adverse party either to continue his cause or lose it.

Third—The proposed amendment would render the law inequitable and unjust.

Your committee cannot see the propriety of adopting the amendment, No. 25, which proposes to change the oath contained in Section 18 of the original bill. The oath contained in Section 18 has been used in Texas for thirty years, in swearing jurors, and contains the exact words necessary, while the amendment proposes to substitute the oath prescribed in the Justices' Act of August 13th, 1870. With all due respect to the Twelfth Legislature, they submit that the oath prescribed is no improvement, and is totally defective in some material points; that it makes each juror a judge of the law and the evidence, and that it allows the jury to obtain both law and evidence from sources other than those recognized by law; nor does it exclude from the consideration of the jurors any evidence which they may deem such that may reach them, even while in the jury-room, or may have come into their possession before they were empaneled. PINER, Chairman.

Senator Thompson, Chairman of the Committee on Rules, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

The Committee on Rules, to whom was referred a resolution fixing the time of the meeting of the Senate at 10 o'clock A. M. and 3:30 P. M., on alternate days, have had the same under consideration, and request me to report the same back, with the recommendation that it do not pass.

THOMPSON, Chairman.

Senator Hobby, Chairman of the Committee on Judiciary No. 1, submitted the following reports:

Hon. R. B. Hubbard, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate Bill No. 195, entitled, "An Act concerning citations by publication in suits heretofore instituted, and to permit judgments to be taken at the first term of court after such publication," have had the same under consideration, and recommend that Senate Bill No. 120 be so amended as to incorporate the provisions of this bill therein. HOBBY, Chairman.

Hon. R. B. Hubbard, President of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate Bill No. 235, entitled, "An Act to incorporate the city of San Antonio, and grant a new charter to said city, and to repeal an act entitled, 'An Act to incorporate the city of San Antonio,' approved July 17, 1856; and an act entitled, 'An Act to amend the act to incorporate the city of San Antonio,' approved February 11, 1860; and 'An Act to grant a new charter to said city of San Antonio,' approved August 13, 1870," have had the same under consideration, and instruct me to report the bill back to the Senate, and recommend that it be referred to the Committee on State Affairs; and, furthermore, that sufficient notice has been given as required by law. HOBBY, Chairman.

Hon. R. B. Hubbard, President of the Senate:

Your Judiciary Committee No. 1, to whom was recommitted Senate Bill No. 94, entitled, "An Act to provide for the supplying of lost records in the several counties in this State," approved April 14, 1874, have had the same under consideration, and instruct me to report the bill back to the Senate, and recommend its passage, with the following amendments:

To Section 4 add the following, "*provided*, that where any judgment is substituted under and by virtue of this act, the time elapsing between the destruction and substitution of said judgment, shall not affect any proceeding to a higher court on appeal or writ of error; and said judgment, when so substituted shall carry all the rights thereunder, in every respect, as the originals, especially preserving the liens, from the date of the originals, and giving the parties the rights to issue executions under the substituted judgments, as under the originals."

Add the following sections, and number them Sections 5 and 6, and make Sections 5 and 6 of the bill read, Sections 7 and 8:

"SEC. 5. Where any cause has been tried in any of the District Courts of this State, and before the time has expired for the taking the same to the Supreme Court by appeal or writ of error, as prescribed by law, and the principal records and papers in said cause have been destroyed by fire or otherwise, either party may proceed to substitute a substantial record of said cause, which record shall contain a substantial statement of the pleadings, the exceptions to the rulings of the court, charge of the court, verdict of the jury, judgment of the court and statement of facts; which record shall be agreed to by the parties or their attorneys, or, in case the parties or their attorneys can not agree, then the Judge before whom said cause was tried, shall make out such record and certify that the same was a substantial record of the cause, as

tried before him; whereupon, either party shall have the right to have said cause reviewed and determined by the Supreme Court upon such substantial record, in the same manner as if the original record and papers had not been destroyed.

"SEC. 6. In any case where judgment has been rendered in the District Court for the defendant, and notice has been given or petition of error has been filed, or when suit has been brought, and before final judgment has been rendered, and the papers and records have been destroyed by fire or otherwise, without fault of plaintiff, the plaintiff shall have the right to bring a new suit in which all of the rights and equities of either party shall be determined *de novo*, and no law of limitation shall bar any of the rights and equities of either party that did not apply to the original suit: *provided*, that all suits in cases where the destruction occurred prior to the passage of this act, shall be brought within twelve months after the passage of this act, and in all other cases the party shall file his suit within twelve months after the destruction of the papers; and in all cases of substitution of the record, on appeal or writ of error, the substituted record shall be filed in the court that tried the cause within twelve months after the passage of this act, if said destruction occurred before the passage of this act, and in all other cases within twelve months after the destruction of the papers and records."

HOBBS, *Chairman*.

Senator McCulloch, Chairman of Committee on Statistics of Industry, Public Health and History of Texas, submitted the following report:

Hon. R. B. Hubbard, President of the Senate :

Your Committee on Statistics of Industry, Public Health and History of Texas, to whom was referred several bills in regard to regulating the business of insurance, have had them under consideration, and report the following bill as a substitute for all of said bills, and recommend the passage of said substitute.

McCULLOCH, *Chairman*.

The caption of the substitute is as follows: A bill to be entitled, "An Act to create the department of Insurance, Statistics and History."

On motion of Senator McLeary, the rules were suspended and said bill was taken up, one hundred copies ordered printed, and the reading of the bill dispensed with by the following vote:

YEAS—Senators Ball, Blassingame, Burton, Crain, Francis, Ford, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCormick, McCulloch, Motley, Piner, Ripetoe, Stephens, Storey, Terrell, Thompson, Wortham—24.

NAYS—None.

NOT VOTING—Senators Brady, Brown, Carroll, Edwards, Moore, Smith—6.

On motion of Senator Blassingame, the rules were suspended and House Bill No. 88, "An Act to prohibit the sale, exchange or gift of intoxicating liquors in any county, Justice's precinct, city or town in this State, that may so elect, prescribing the mode of election and affixing a punishment for its violation," was taken up, fifty copies ordered printed, and made special order for Wednesday next at 11 o'clock A. M., and from day to day until disposed of.

The resolution of Senator Terrell, pending at adjournment, yesterday, to-wit: "That on and after Monday next the daily sessions of the Sen-

ate shall begin at 2:30 P. M., and continue as long as necessary, and that all committees meet in the forenoon," was taken up and lost.

By leave, Senator Piner, Chairman of Judiciary Committee No. 2, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Judiciary Committee No. 2, to whom was referred Senate Bill No. 222, entitled, "An Act to fix the times of holding District Courts in the Twenty-third Judicial District," have had the same under consideration, and beg leave to report it back and recommend its passage.

PINER, *Chairman.*

Senator McLeary introduced a bill entitled: "An Act to amend Article 717, of 'An Act to adopt and establish a penal code for the State of Texas,' approved August 28, 1856.

Read by caption and referred to Judiciary Committee No. 1.

Senator McCormick introduced a bill entitled: "An Act for the relief of the collecting officers of the State of Texas."

Read by caption and referred to Committee on Finance.

Senator Henry of Cass introduced a bill entitled: "An Act to amend Section 4 of an act amendatory to, and supplementary of an act, entitled, 'An Act to organize and incorporate the East Line and Red River Railroad Company,' approved March 22, 1871, and to aid in the construction of said railroad," approved May 22, 1873.

Read by caption and referred to Committee on Internal Improvements.

Senator Storey introduced a bill entitled: "An Act to authorize and make provision for the exchange and substitution of engraved bonds for the pension bonds issued under authority of the seventh section of an act, entitled, 'An Act granting pensions to the surviving veterans of the Revolution which separated Texas from Mexico, etc.,' approved April 21, 1874.

Read by caption and referred to Committee on Finance.

Also, a bill entitled: "An Act to encourage mining and prospecting for minerals."

Read by caption and referred to Judiciary Committee No. 1.

Senator McCormick introduced a joint resolution, "Instructing our Senators, and requesting our Representatives in Congress to secure, if possible, the permanent establishment of a line of steam vessels to carry the United States mail once a week, between the city of Galveston and Brazos Santiago."

Read by caption and referred to Committee on Federal Relations.

Senate Bill No. 103, "An Act to better define the duties of Sheriffs and other officers," being the unfinished business, was taken up and read second time.

Senator Terrell offered the following amendment:

Amend by adding after Section 14, the following, and changing Section 15 to 16:

"SEC. 15. Whenever a Sheriff, or other peace officer, shall believe that combinations exist in the county in which said officer resides, too powerful to be resisted by the civil officers, with such assistance as they are authorized, or may be able to procure under the preceding provisions of this act, he shall communicate that fact to the Governor of this State, and if the Governor believes such information to be true, he shall

order such portion of the frontier forces, in the service of the State, as he may think necessary, to aid in the arrest of criminals, or persons charged with crime, and the officer in charge of said frontier force, in making arrests, shall act under the orders of the Sheriff: *provided*, that said officer may act independent of the Sheriff in making arrests under process issued by civil authority, if, in the opinion of the Governor, the Sheriff of the county is inefficient, or unable to perform his official duties."

Adopted.

Senator Martin offered the following amendment:

Amend Section 4 by striking out all after the word, "murder," in line 9, to the word, "rape," in line 10.

Senator Henry of Cass offered the following as a substitute:

Amend by striking out Section 4.

Senator Wortham in the chair.

Senator Terrell offered the following, which was accepted by Senator Martin in lieu of his amendment:

Amend Section 4 by striking from lines 8, 9 and 10, the words, "assault with intent to murder, theft of property of the value of twenty dollars or over," and adding to said section the following proviso, viz: "*provided*, that no Sheriff, or those assisting him, shall use arms on one attempting to escape, unless the Sheriff be within hailing distance, and shall first summon, in a voice audible to the party seeking to evade an arrest, the surrender of said party; and no arms shall be used by the Sheriff or his posse until after said summons to surrender has been disregarded by the one attempting to avoid the arrest, and his arrest can be effected in no other manner."

The President in the chair.

Senator Henry of Cass withdrew his substitute.

Senator Smith offered the following as a substitute for Senator Terrell's amendment:

In Section 4, line 7, strike out all after the word, "arms," down to the word, "nor," in line 11, and in line 18, all after the word, "citizen."

Lost by the following vote:

YEAS—Senators Henry F. M., McCormick, McCulloch, Piner, Ripetoe, Smith, Wortham—7.

NAYS—Senators Ball, Blassingame, Brady, Brown, Burton, Carroll, Crain, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Hobby, Ledbetter, Martin, McLeary, Moore, Motley, Stephens, Storey, Terrell, Thompson—23.

Senator Terrell's amendment was then adopted, by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Brown, Burton, Carroll, Crain, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Hobby, Ledbetter, Martin, McLeary, McCormick, McCulloch, Moore, Motley, Ripetoe, Smith, Stephens, Storey, Terrell, Thompson, Wortham—28.

NAYS—Senators Henry F. M., Piner—2.

Senator Francis offered the following amendment:

Amend Section 4, line 6, by inserting after the word, "using," the words, "or attempting to use."

Adopted.

Senator Burton offered the following amendment:

Amend Section 5, line 6, by striking out, "eighteen," and inserting in lieu thereof, the word, "twenty-one."

On motion of Senator Grace, the previous question was ordered. Senator Burton's amendment was lost, and the bill ordered engrossed by the following vote:

YEAS—Senators Blassingame, Brady, Brown, Burton, Carroll, Crain, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Hobby, Ledbetter, Martin, McLeary, McCormick, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell, Thompson—25.

NAYS—Senators Ball, Henry F. M., Piner, Smith, Wortham—5.

A message was received from the House, announcing the passage by that body of the following bills:

House Bill No. 35—"An Act to authorize the refunding of moneys paid into the General Land Office under provisions of 'An Act to authorize the location, sale and settlement of the Mississippi and Pacific railroad reserve,' passed August 26, 1856, and the provisions of a supplemental act, entitled, 'An Act supplemental to an act to authorize the location, sale and settlement of the Mississippi and Pacific railroad reserve,' approved November 28, 1857, in all cases wherein the State failed to patent the lands for which such moneys were paid."

House Bill No. 17—"An Act to provide for the pensioning of the surviving soldiers and volunteers of the army of Texas, in the war between Texas and Mexico, from the commencement of the revolution in 1835, to the first day of January, 1837, and the surviving signers of the Declaration of Texas Independence, and such of the surviving widows of such soldiers, volunteers and signers of the Declaration of Texas Independence as have remained unmarried, and to provide for the payment of the same."

Senate Bill No. 26—"An Act to require the Clerks of the District and County Courts of the State to provide and keep indexes and cross-indexes of the names of parties to all causes in their courts, and to provide a penalty for their failure to comply with the provisions of this act," with amendments to the same.

Senator Storey moved the further suspension of the rule in order to put Senate Bill No. 103 on its third reading, which was carried by the following vote:

YEAS—Senators Blassingame, Brady, Brown, Burton, Carroll, Crain, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Hobby, Ledbetter, Martin, McLeary, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell, Thompson—24.

NAYS—Senators Ball, Henry F. M., McCormick, Piner, Smith, Wortham—6.

The President *pro tempore* in the chair.

A message was received from the House, announcing the passage, by that body, of the following bills:

House Bill No. 82—"An Act to define and punish nuisance."

House Bill No 75—"An Act to amend an act entitled, 'An Act to attach the county of Crockett to the county of Kinney for judicial purposes,' approved February 10, 1875.

House Bill No. 62—"An Act to provide for the compensation of special Judges."

Senator Ball in the chair.

Senate Bill No. 103 was then read the third time, and passed by the following vote:

YEAS—Senators Blassingame, Brady, Brown, Burton, Carroll, Crain,

Edwards, Francis, Ford, Grace, Guy, Henry J. R., Hobby, Ledbetter, Martin, McLeary, McCormick, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell—24.

NAYS—Senators Ball, Henry F. M., Piner, Smith, Wortham—5.

NOT VOTING—Senator Thompson.

Senator Henry of Cass presented the following protest, which was read and spread upon the journals:

"I protest against the passage of this act, for the reason that, in my opinion, it will prove to be injurious to the people.

"*First*—Because it has the effect of putting the Sheriff and his posse, with arms in their hands, upon horseback, with authority, under sanction of law, to ride over the State, at the State's expense, and shoot down men charged with crime, even before indictment is found, where such persons offer resistance or attempt to make their escape.

"*Second*—Because the practical working of this law will tend to further cheapen human life in the State.

"*Third*—Because the Sheriff, under this law, under certain circumstances, is empowered and licensed to inflict the death penalty at his discretion, even before indictment is found or conviction had.

"*Fourth*—Because the Legislature will have no standard by which to measure the appropriations to meet the expenses that will be incurred under this law."

On motion of Senator Grace, the Senate adjourned until to-morrow at 9 o'clock A. M., by the following vote:

YEAS—Senators Blassingame, Brown, Carroll, Crain, Edwards, Francis, Ford, Grace, Guy, Henry F. M., Hobby, Ledbetter, Martin, McCulloch, Moore, Motley, Piner, Stephens, Storey, Wortham—20.

NAYS—Senators Brady, Burton, Henry, J. R., McLeary, McCormick, Ripetoe, Smith, Terrell, Thompson—9.

FORTY-SIXTH DAY.

SENATE CHAMBER, }
AUSTIN, TEXAS, June 10, 1876. }

Senate met pursuant to adjournment. Roll called. Quorum present. Prayer by Rev. Dr. Dickson.

The journal of yesterday adopted.

Senator McLeary presented the petition of many citizens of Menard county, "protesting against the removal of their county seat from the town of Menardville, and against the annexing of any more territory to their county, as it already contains 900 square miles, etc."

Read and referred to Committee on Counties and County Boundaries.

Senator Stephens, Chairman of the Committee on Federal Relations, submitted the following report:

Hon. R. B. Hubbard, President of the Senate:

Your Committee on Federal Relations, to whom was referred Senate Joint Resolution No. 250, "instructing our Senators and requesting our Representatives in Congress to secure, if possible, the permanent establishment of a line of steam vessels to carry the United States mail once a week, between the city of Galveston and Brazos Santiago," have had the same under consideration, and instruct me to report it